

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In re Applications of)	MM Docket No. 93-94
)	
SCRIPPS HOWARD)	File No. BRCT-910603KX
BROADCASTING COMPANY)	
)	
For Renewal of License of)	
Station WMAR-TV,)	
Baltimore, Maryland)	
)	
and)	
)	
FOUR JACKS BROADCASTING, INC.)	File No. BPCT-910903KE
)	
For Construction Permit for a)	
New Television Facility on)	
Channel 2 at Baltimore,)	
Maryland)	

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To: The Honorable Richard L. Sippel
Administrative Law Judge

**OPPOSITION TO "MOTION TO REOPEN THE RECORD FOR THE
RECEIPT OF NEW EVIDENCE RELEVANT TO DIVERSIFICATION"**

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its attorneys and pursuant to Section 1.294(b) of the Commission's Rules, hereby opposes the "Motion to Reopen the Record for the Receipt of New Evidence Relevant to Diversification" ("Motion") filed on June 27, 1994 by Scripps Howard Broadcasting Company ("Scripps Howard"). The Motion marks Scripps Howard's second attempt to raise matters under the standard comparative issue which, as a matter of both fact and law, are irrelevant to that issue. Like Scripps Howard's first attempt, its present Motion should be rejected.

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List A B C D E

1. Scripps Howard seeks to introduce into the record a June 8, 1994 filing by Sinclair Broadcast Group, Inc. ("Sinclair") with the Securities and Exchange Commission ("SEC"). That filing reports that Sinclair has entered into a Programming Services Agreement ("PSA") by which Sinclair will provide programming to television station WNUV-TV, Baltimore, Maryland. While Scripps Howard concedes that "the Commission has not yet announced rules for local programming agreements in television" (Motion at 4 n.4), it nonetheless would have the Presiding Judge reopen the record and receive the FCC filing as "new evidence relevant to the extent to which [Four Jacks] should receive comparative credit for diversification." Id. at 1.

2. In attempting to reopen the record at this late date, Scripps Howard faces a heavy burden. Among other things, Scripps Howard must show that "the new evidence, if true, would affect the ultimate disposition of the proceeding." Washoe Shoshone Broadcasting, 5 FCC Rcd 5561 (1990). Scripps Howard's Motion totally fails this test, for the facts on which it relies are absolutely irrelevant to the diversification criterion.

3. Indeed, Scripps Howard has gone down this same path before. On October 5, 1993, it filed a "Statement for the Record" in which it sought to cross-examine Four Jacks' principals on "existing and proposed programming arrangements" whereby entities owned by Four Jacks' principals provided or proposed to provide programming services to television stations. As in its present Motion, Scripps Howard conceded that "[t]he Commission has yet to address the impact of its multiple

ownership rules on such local marketing arrangements in television" -- yet insisted that these programming services arrangements were "relevant to diversification."

4. The Presiding Judge denied Scripps Howard's request. Order, FCC 93M-671 (released October 22, 1993). The reason for this ruling was stated squarely and unambiguously:

The Commission has not yet definitively addressed the question of the impact of the multiple ownership rules on local marketing arrangements in television. Therefore, the Presiding Judge has no authority to treat the broadcast arrangements as demerits for media diversification.

Id. at 2 (emphasis added; footnote and citations omitted).

5. The Commission still has not decided this issue. Quite clearly, therefore, the Judge has no more authority now to treat Programming Services Agreements as relevant to the diversification criterion than he did at the time of Scripps Howard's first request. Scripps Howard is doing nothing more than obstinately pursuing an evidentiary path that has long ago been denied to it.^{1/} Moreover, there is no case support for Scripps Howard's Motion.^{2/} The diversification criterion of the

^{1/} The Presiding Judge has recently refused to revisit his action denying the addition of issues against Scripps Howard based on the adjudicated anticompetitive misconduct of Scripps Howard's media subsidiaries -- despite a recent additional finding of such misconduct. See Order, FCC 94M-401 (released June 14, 1994). Scripps Howard's attempt to revisit a prior ruling by the Judge should be treated no differently.

^{2/} Illustrative of the sheer lack of merit in Scripps Howard's Motion is the fact that in Ronald Sorenson, 5 FCC Rcd 3144 (Rev. Bd. 1990), modified, 6 FCC Rcd 1952 (1991), recon. denied, 6 FCC Rcd 6901 (1991), the only case Scripps Howard cites in support of its argument, the Review Board refused to impose a diversification demerit on an applicant for his ownership of a program production company.

standard comparative issue is directed toward ownership interests in media of mass communications. See Massillon Broadcasting Co., Inc., 36 F.C.C. 809 (1964); Alvin L. Korngold, 45 F.C.C.2d 1 (Rev. Bd. 1975); see also Daytona Broadcasting Co., Inc., 103 F.C.C.2d 931 (1986) (noncognizable interests for purposes of multiple ownership rules are similarly noncognizable for comparative purposes). As noted above, there is no Commission rule or policy holding that a party providing programming to a television station through a Programming Services Agreement would have an attributable ownership interest in that station.

6. Moreover, even if Sinclair's PSA with WNUV-TV could even remotely be considered a cognizable media interest of Four Jacks' principals under the diversification criterion, the terms of the PSA expressly provide for the agreement's termination in the event Four Jacks is granted a construction permit for Channel 2 in Baltimore. Thus, the PSA could not result in a diversification demerit against Four Jacks in any event.^{3/} See, e.g., Washington's Christian Television Outreach, Inc., 59 R.R.2d 787 (1985) (other media interest not cognizable for purposes of diversification where applicant pledged to divest other interest upon grant of application), recon. denied, 59 R.R.2d 1679 (1986).

^{3/} Since the WNUV-TV PSA is in no way relevant to the diversification credit due Four Jacks, Scripps Howard's argument that Four Jacks should have amended its application to report the PSA is groundless.

Conclusion

For the second time, Scripps Howard is attempting to broaden the scope of the standard comparative issue to include Programming Services Agreements in which Four Jacks' principals are involved. Again, however, the Judge has absolutely no authority to treat such agreements as relevant to diversification -- and in any event, the WNUV-TV PSA expressly provides for its termination upon a grant of Four Jacks' application. Scripps Howard's Motion, like its first attempt to adduce evidence along these lines, lacks any merit and should be denied.

Respectfully submitted,

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Dated: July 7, 1994

CERTIFICATE OF SERVICE

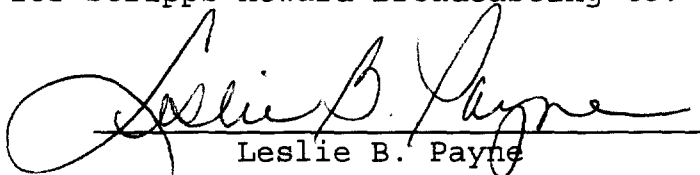
I, Leslie B. Payne, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the foregoing "OPPOSITION TO 'MOTION TO REOPEN THE RECORD FOR THE RECEIPT OF NEW EVIDENCE RELEVANT TO DIVERSIFICATION'" were sent this 7th day of July, 1994, by first class United States mail, postage prepaid, to the following:

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